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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**M.A.No. 1021/2006**

**Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

**Appellants** : 1. Babulal Jaiswal, S/o Bholanath, aged 60 years, Caste Jaiswal, R/O Village Beltara, Tahsil Katghora P.S. Ratanpur District Korba (C.G.) (Owner of tractor & trolley no. M.I.L. 6013, M IL 6015, Agriculturist)

: 2. Sewakram S/O Lalji (Driver) R/o Village Kotma P.S. & Tahsil Mungeli, District Bilaspur, Presently R/o Village Beltara Tahsil Katghora District Korba (C.G.)

Versus

**Respondents** : 1. Brahaspati Das Vaishnav, S/o Madhav Das Vaishnav.

: 2. Devkumari Vaishnav, D/o Brahaspati Das Vaishnav.

: 3. Kumari Jyoti Vaishnav, Aged 15 years, D/o Brahaspati Das, Natural Guardian Brahaspati Das Vaishnav.

: 4. Kumari Rakhi Vaishnav, Aged 7 years, D/o Brahaspati Das Vaishnav, Natural Guardian Brahaspati Das Vaishnav.

: 5. Bajrang Das Vaishnav, Aged 6 years, S/o Brahaspati Das, Natural Guardian Brahaspati Das Vaishnav,

All R/o Korba Tahsil & District Korba (C.G.)

Present: Shri Atul Pandey, Counsel for the appellants.

**ORAL ORDER**

(Passed on 14th March, 2007)

Heard on admission.

2. The appellants, the owner and driver of the offending vehicle, are aggrieved by an order dated 7.8.2006 passed by the Additional Motor Accidents Claims Tribunal, Korba in M.J.C.No.8 of 2004 whereby the application filed by the appellants herein under Order 9 Rule 13 read with Section 151 C.P.C. was dismissed as barred by limitation.

3. A perusal of the record of Claims Case No. 68 of 1988 shows that after repeated notices issued against the appellants herein, by the M.A.C.T., remained unserved from 23.09.1996 till 24.10.1997, upon an

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application for issuance of notice through publication filed on 21.1.1998 an order was passed by the M.A.C.T. on 2.2.1998 for issuance of notice to the appellants herein through publication. Such a publication was made on 23rd February 1998. On the due date for appearance of the appellants i.e. 26.02.1998 as also on n 25.3.1998 the appellants herein remained absent. The learned M.A.C.T. proceeded *ex parte* against the appellants and finally passed an award on 18.02.2000 imposing liability on the appellants to pay compensation of Rs.55,000/- along with interest at the rate of 12% per annum.

4. During execution of the above mentioned award, notice was issued to the appellants. It is not disputed by the learned counsel for the appellants that notice issued by the Executing Court was served on the appellants herein on 26.04.2004 and they appeared before the Executing Court on 05.05.2004. The application under Order 9 Rule 13 read with Section 151 C.P.C. to set aside the *ex parte* award was ultimately filed on 1.7.2004. The only ground mentioned in the application under Order 9 Rule 13 read with Section 151 C.P.C. is that on appearance before the Executing Court on 5.5.2004 the counsel for the appellants herein asked them to appear on 1.7.2004, and therefore, the appellants appeared on 1.7.2004 and preferred an application under Order 9 Rule 13 C.P.C. Affidavit of the counsel was not filed in support of the application. An application under Section 5 of the limitation Act duly supported with an affidavit of the appellants was filed.

5. The only point for consideration in this Misc. Appeal is whether the appellants were prevented by sufficient cause from filing the application under Order 9 Rule 13 read with Section 151 C.P.C. within limitation. Under article 123 of the Limitation Act to set aside a decree passed *ex parte* the period of limitation is 30 days from the date of decree or where the summons or notice was not duly served when the applicant had knowledge of the decree. Under Order 5 Rule 20 of C.P.C. where the Court orders issuance of summons by an advertisement in a local newspaper, the service substituted by order of the Court is as effectual as if it has been made on the defendant personally. In the present

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case, learned counsel for the appellants has fairly conceded that he had no idea that the learned M.A.C.T. had ordered issuance of substituted service by publication and the publication was actually made on 23rd February 1998. Be that as it may, since the service on the defendants by a publication is deemed to be as effective as if it had been made on the defendants/appellants personally under sub-clause (2) of Rule 20 of Order 5 of C.P.C. the period of limitation for filing an application under Order 9 Rule 13 shall commence from 18.02.2000 when the *ex parte* judgment and decree was passed and in this view of the matter, the application under Order 9 Rule 13 C.P.C. was hopelessly barred by limitation.

6. Even assuming for the arguments sake that the appellants had knowledge of the *ex parte* award for the first time on 26.04.2004 when the notice issued by the Executing Court was served on them, the application under Order 9 Rule 13 read with Section 151 C.P.C. filed on 1.07.2004 before the Executing Court was also barred by limitation as no sufficient ground for condonation of delay was made out in the absence of the affidavit of the counsel for the appellants.

7. There is no merit in this appeal which is accordingly dismissed at the admission stage. There shall be no order as to costs.

M.C.P.No.1287 of 2006 for stay also stands dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge